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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 21, AFL-CIO, Petitioner, v. PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent; SAN FRANCISCO UNIFIED SCHOOL DISTRICT, Real Party in Interest.	A121202 (PERB Case No. SF-CE-2282-E)

Petitioner International Federation of Professional and Technical Engineers, Local 21, AFL-CIO (Local 21), represents certain noncertificated (classified) employees of the San Francisco Unified School District (District) and certain employees of the City and County of San Francisco (City) in the same classifications. Local 21 seeks review of a decision issued by respondent Public Employment Relations Board (PERB) (PERB Decision No. 1948, Mar. 13, 2008). In that decision, PERB determined that, with respect to the salaries paid to those certain classified employees of the District, the District was not bound by the results of collective bargaining and arbitration between the City and Local 21 for City employees in the same classifications. We issued a writ of review and now affirm PERB's decision.

I. BACKGROUND

A. Relationship Between District and City

The City Charter (Charter) provides that the District is under the "control and management" of an elected board of education. (Charter, § 8.100.)[1] Nearly all of the District's revenues come from the State of California. The District receives, in addition, some services and funds from the City, including $71,000 per year to offset the salaries of the superintendent and the members of the school board; service grants from the City; allocations from the Public Education Enrichment Fund pursuant to a Charter amendment; water, electricity, and police services; and professional services either gratis or on a fee-for-service basis. The District functions as an independent financial entity, with a budget approved by the state through the California Department of Education.[2]

The District's classified employees participate in the City's civil service merit system. Pursuant to that system, the City's Civil Service Commission (Commission) establishes rules, policies, and procedures to carry out the Charter's civil service merit system provisions. (Charter, § 10.101.) Those rules are required to govern "applications; examinations; eligibility; duration of eligible lists; certification of eligibles; leaves of absence for employees and officers; appointments; promotions; transfers; resignations; lay-offs or reduction in force, both permanent and temporary, due to lack of work or funds, retrenchment or completion of work; the designation and filling of positions, as exempt, temporary, provisional, part-time, seasonal or permanent; status and status rights; probationary status and the administration of probationary periods, except duration; pre-employment and fitness for duty medical examinations . . . ; classification; conflict of interest; and such other matters as are not in conflict with this Charter . . . ." (*Ibid.*) Seniority for purposes of "bumping" exists between the City and the District, so a City

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[1] The current charter became effective in 1996. Where the distinction is pertinent, we shall refer to the former charter as the 1932 Charter.

[2] Before the late 1970's, the District was considered a department of the City, and the commissioners, or members of the school board were appointed by the mayor. The members of the school board are now independently elected.

employee with greater seniority may "bump" a District classified employee with less seniority, and vice versa. According to the executive officer of the City's Department of the Civil Service Commission, salary setting is not considered part of the merit system.

Historically, the salaries of most City employees were set, not through collective bargaining, but through salary standardization schedules prepared by the Commission, based on prevailing salaries for like service and working conditions. After the schedules were submitted to the board of supervisors, the board would either approve, amend, or reject them, subject to certain procedures. (1932 Charter, § 8.401; see *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 906-907.) A provision of the 1932 Charter—no longer in effect—provided that the salaries for non-teaching and non-technical positions in the District would be set in accordance with the salary standardization schedules. (1932 Charter, § 5.101.)

Contracts between the District and Local 21, beginning in 1983, reflected an agreement that the District would pay classified employees represented by Local 21 the wages set in the salary standardization schedule adopted by the City's Board of Supervisors.

B. Propositions B and F

In 1991, the City's electorate passed an initiative measure, Proposition B, which amended the Charter to give employee unions the option to have wages, hours, benefits, and other terms of employment set through collective bargaining rather than the salary standardization schedules. (See S.F. Voter Information Pamp. (Nov. 5, 1991) text of Prop. B, p. 39.) Under Proposition B's impasse resolution procedures, disputes that could not be resolved by good faith bargaining between the City and the employee organization would be submitted to a three-member mediation/arbitration board. If the mediation/arbitration proceedings did not produce an agreement, the board would choose between the final offers of each side to the dispute. (*Id.* at p. 40.) The amendment provided that it would apply to "miscellaneous employees . . . including employees of San Francisco Unified School District and San Francisco Community College District to the extent authorized by state law." (*Id.* at p. 39.) It also provided that "except insofar as

they affect compensation, those matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit system shall not be subject to bargaining under this part . . . ." (*Ibid.*)

In 1994, the City's voters passed Proposition F, which amended the Charter to eliminate the option of having wages set by salary standardization schedules. (See S.F. Voter Information Pamp. (Nov. 8, 1994) text of Prop. F, p. 101.) The amendment also revised the impasse resolution procedures to require the three-member mediation/arbitration board, in the event the arbitration does not produce an agreement, to decide whichever last offer of settlement on each issue it finds most nearly conforms to the factors traditionally taken into consideration, including changes to the cost of living; the salaries and benefits of employees performing similar services; the health and safety of employees; "the financial resources of the city and county of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the board of supervisors; other demands on the city and county's resources including limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenue by enhancement or other means; budgetary reserves; and the city's ability to meet the costs of the decision of the arbitration board." (*Id.* at p. 104.) Proposition F retained the provision that the relevant portions of the Charter would apply to all miscellaneous employees, including employees of the District "to the extent authorized by state law." (*Id.* at p. 102.)[3]

C. Salary Negotiations and This Dispute

When the time came to set salaries of the District's classified employees for the 1993-1994 school year, Local 21 indicated it wished to pursue collective bargaining with the City rather than using the salary standardization schedules. The District took the position that the District, not the City, was the proper party to bargain the salaries and

[3] This provision is found in the 1996 Charter at section A8.409-1; the impasse resolution procedures are found at section A8.409-4.

benefits of the District's employees, and so informed Local 21 and the City. The City agreed that it was not authorized to represent the District in negotiations with Local 21.

Despite their dispute about whether the City could bargain on behalf of the District, Local 21 ultimately consented to negotiate with the District, and negotiated contracts covering wages first from July 1, 1996, to June 30, 1999, and then from July 1, 1999, to June 30, 2002.

In the spring of 2002, the parties again commenced contract negotiations. Negotiations broke down, however, and in June 2002, Local 21 informed the District that it intended to invoke the jurisdiction of PERB, taking the position that District employees must be provided with the wages and benefits that had been established for City workers in the same classifications pursuant to a memorandum of understanding (MOU) after the City and Local 21 had engaged in mediation and arbitration proceedings in 2001. Local 21 indicated it had not previously invoked PERB's jurisdiction because the District had kept wages at approximately the same level as those of City employees in the same classifications, but that the District was no longer continuing that practice. The City attorney took the position that District employees represented by Local 21 were not covered by the MOU between Local 21 and the City.

Local 21 brought an unfair practice charge against the District with PERB in August 2002, seeking an order compelling the District to provide classified employees represented by Local 21 with the salaries and wages established by mediation/arbitration proceedings that had taken place between the City and Local 21 in 2001.

After various proceedings before PERB, which we need not detail here, PERB issued a complaint against the District, alleging that the District had violated Government Code[4] section 3543.5, subdivisions (a), (b), and (c), by denying Local 21's request to provide District employees with the wages and benefits established by the MOU with the City, and by insisting that Local 21 bargain with the District as an entity separate from the City.

[4] All undesignated statutory references are to the Government Code.

The matter was heard before an administrative law judge (ALJ), who issued a proposed decision dismissing Local 21's charge and the complaint, finding that the provisions of the impasse resolution procedures of the Educational Employment Relations Act (§ 3540 et seq.) (EERA) were inconsistent with, and preempted, the Charter's arbitration procedures, and that the District did not act illegally by refusing to participate in binding interest arbitration or to confer on its employees wages determined through the City's arbitration proceedings for the same classifications.

Local 21 filed exceptions to the ALJ's decision. In decision No. 1948, PERB affirmed the ALJ's findings and dismissed the complaint and unfair practice charge without leave to amend, concluding the ALJ had correctly found that the EERA preempts contrary local impasse resolution procedures and that the remedy sought by Local 21—application of the interest arbitration awards for City units to the District's classified employees or the District's participation in binding arbitration—would conflict with the EERA.

Local 21 petitioned this court for review of PERB's decision, and we granted the petition. Local 21 asks us to annul PERB's decision and set it aside with directions to enter a decision that the District "is a department of the City and County of San Francisco with regard to the employment of its classified [District] employees, who are therefore entitled to the same compensation and benefits that are provided to City and County employees in the same civil service classifications pursuant to provisions of the San Francisco Charter."

II. DISCUSSION

A. Statutory Background

This action requires us to examine portions of the Education Code, the Government Code, and the Charter. We have already summarized the relevant portions of the Charter above.

1. Education Code Section 45318

Education Code section 45318 was adopted in 1945. It provides, in pertinent part, "In every school district coterminous with the boundaries of a city and county, . . .

employees not employed in positions requiring certification qualifications shall be employed, if the city and county has a charter providing for a merit system of employment, pursuant to the provisions of that charter providing for that system and shall, in all respects, be subject to, and have all rights granted by, those provisions; provided, however, that the governing board of the school district shall have the right to fix the duties of all of its noncertificated employees."

Division Two of the First Appellate District has explained the background of this provision as follows: "In early times, San Francisco School District personnel were employees of the City of San Francisco (City) under the civil service provisions of the city charter. Since the adoption of article IX, section 14 of the California Constitution in 1926 and the predecessors to current Education Code section 35010, the Legislature required that all school districts be governed by their own boards of trustees. [Citations.] [¶] In 1935 the Legislature created a comprehensive scheme of job protection for school employees not possessing certification qualifications, i.e., 'classified' or noncertified employees. [Citations.] However, this legislation excluded from its scope school districts lying wholly within the boundaries of a city or city and county and which had their own merit system of employment. [Citation.] San Francisco has such a district. [¶] These events created some doubt and confusion among [District] noncertificated employees as to whether they had a vested right to continued civil service status under the city charter or could lose that status by a court decision or action of the State Board of Education. [¶] It was against this background that Assembly Bill No. 1488 (now section 45318), was passed and signed into law. Introduced at the request of the City's board of education and supported by its board of supervisors and civil service association, the statute provides that in all school districts coterminous with the boundaries of a city and county (a description satisfied uniquely by San Francisco), noncertificated employees 'shall be employed' pursuant to the city and county's merit system of employment, '*and shall, in all respects, be subject to, and have all rights granted by, such provisions*. . . .'

(Italics added.)" (*Evans v. San Francisco Unified School Dist.* (1989) 209 Cal.App.3d 1478, 1480-1481 (*Evans*), fns. omitted).)[5]

2. The EERA

"The EERA establishes a system of collective bargaining for employees of public school districts serving students in grades kindergarten through 14. Enacted in 1975 (Stats. 1975, ch. 961, § 2, p. 2247, operative July 1, 1976; codified as §§ 3540-3549.3), the EERA requires school districts to negotiate in good faith with duly selected exclusive representatives of its employees as to appropriate statutorily defined subjects within the scope of representation. (§§ 3543.3, 3543.5.)" (*Banning Teachers Assn. v. Public Employment Relations Bd.* (1988) 44 Cal.3d 799, 804 (*Banning Teachers Assn.*).)

The EERA was intended to "promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formation of educational policy. . . ." (§ 3540.) The Legislature also declared that the

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[5] The court in *Sonoma County Bd. of Education v. Public Employment Relations Bd.* (1980) 102 Cal.App.3d 689, 694 (*Sonoma County Bd. of Education*)) explained the background of the merit system as follows: "The introduction of the merit *principle* into the field of governmental employment is rooted in the belief that employees should be recruited, selected and advanced under conditions of political neutrality, equal opportunity and competitive merit. [Citations.] The implementation of that principle through the establishment of merit or civil service *systems* in the public sector had as its principal focus the removal of political or other extraneous considerations in favor of those based upon relative competence and fitness. [Citations.] The gradual development of modern personnel administration in the public sector witnessed a shift in emphasis from such original focus to one of a greater concern for economy and efficiency in government resulting in the merger of traditional merit systems into comprehensive programs of personnel management initiated and administered by the government employer. [Citation.]"

EERA did not "supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements." (*Ibid.*)

Under the EERA, it is the duty of a "public school employer"[6] to meet and negotiate with representatives of employee organizations with regard to matters within the scope of representation (§ 3543.3), defined as "matters relating to wages, hours of employment, and other terms and conditions of employment" (§ 3543.2, subd. (a)).

The EERA includes detailed procedures to be followed in the event of an impasse in negotiations over matters within the scope of representation. (§§ 3548-3548.8.) Either the public school employer or the representative may declare that an impasse has been reached and ask PERB to appoint a mediator to assist in resolving the controversy. If PERB determines that there is an impasse, it appoints a mediator to meet with the parties. (§ 3548.) If the mediator is unable to effect a settlement, either party may ask to have their differences submitted to a three-member factfinding panel. (§ 3548.1.) The factfinding panel must meet with the parties or their representatives, and may "make inquiries and investigations, hold hearings, and take any other steps as it may deem appropriate," and has the power to issue subpoenas for witnesses and the production of evidence. (§ 3548.2, subd. (a).) In arriving at their findings and recommendations, the fact finders are to consider various criteria, including "[t]he interests and welfare of the public and the financial ability of the public school employer," and "[c]omparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school

[6] A public school employer is defined as "the governing board of a school district, a school district, a county board of education, [or] a county superintendent of schools . . . ." (§ 3540.1, subd. (k).)

employment in comparable communities." (§ 3548.2, subd. (b)(3), (4).) The panel's recommendations are advisory only. (§ 3548.3, subd. (a).)

The EERA also provides that a public school employer and exclusive representative may include within a written agreement procedures for "final and binding arbitration of such disputes as may arise involving the interpretation, application, or violation of the agreement." (§ 3548.5.) If the written agreement between the parties does not include such procedures, the parties may agree to submit any disputes involving the interpretation, application, or violation of the agreement to final and binding arbitration pursuant to the rules of PERB. (§ 3548.6.)

B. PERB's Decision

PERB defined the key issue in the case as "whether the ALJ correctly held that, with respect to District classified employees, EERA preempts the City Charter provision requiring binding interest arbitration of collective bargaining disputes, thus precluding Local 21's unfair practice charge alleging a unilateral change based upon the District's refusal to apply the Charter provision." In affirming the ALJ's findings and dismissing the charge and complaint, PERB adopted a portion of the preemption analysis from the ALJ's proposed decision, including the following: " 'The local police power of a city or county is recognized in article XI, sections 6, 7, and 8 of the [California] Constitution. Section 7 allows adoption and enforcement of local regulations "not in conflict with general laws." Sections 6 and 8 were amended following enactment of section 7 . . . to give greater deference to charter cities under the "home rule" concept, which exempts such cities from the "conflict with general laws" restriction. [*Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61.] San Francisco is a charter city. As the *Bishop* case explains: [¶] 'As to matters which are of statewide concern, however, home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation (the preemption doctrine). [Citations.]' [*Id.* at pp. 61-62.]" (Fns. omitted.)

The PERB decision continued its quotation of the ALJ's proposed decision: " 'There can be little dispute that the [City's] interest arbitration procedure conflicts with EERA's impasse procedure (mediation followed by factfinding). (Secs. 3548-3548.8.) The District presumably would be the only school district in the state controlled by an interest arbitration procedure for determining salaries of its employees, while all others with represented employees are required to proceed through the EERA impasse procedure. The interest arbitration procedure places wage-setting in the hands of a party other than the District governing board and allows a binding award of wages based on factors that potentially compromise the District's budgetary prerogatives and oversight. [Citations.] [¶] 'At the same time, it is well settled that "creating uniform fair labor practices" and the "maintenance of stable employment relations" between public employees and their employers are matters of statewide concern. [Citations.] This conclusion was extended specifically to the procedures for the resolution of bargaining disputes. [Citation.] . . . [¶] 'The Legislature's intent to occupy the field to the exclusion of inconsistent local procedures for resolving bargaining disputes is evident in section 3540, which states that it is the purpose of the EERA "to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California *by providing a uniform basis for recognizing the right of public employees* to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit. . . ." (Italics added.) [Citations.] This preemptive intent is also expressed in the granting of initial exclusive jurisdiction to PERB, the quasi-judicial agency administering the EERA, to decide both unfair practice violations and representation issues arising under the Act. [Citations] Such a scheme conflicts with local rulemaking intended to address local concerns.' "

PERB agreed with the ALJ that the EERA preempts contrary local impasse resolution procedures, and that Local 21's proposed remedy would bypass the procedures under the EERA and, therefore, conflict with the EERA. PERB went on to state that,

although parties are not prohibited from choosing binding interest arbitration procedures that do not conflict with the EERA, they "may not waive the impasse procedures set forth under the EERA."

PERB also rejected objections Local 21 had interposed to the ALJ's proposed decision, including its arguments that pursuant to section 3540, the EERA does not supersede employers' rules and regulations governing employer-employee relations, and that the right to binding arbitration of collective bargaining disputes was encompassed within the civil service rights guaranteed by Education Code section 45318.

On appeal, Local 21 makes several challenges to PERB's decision, contending (1) the EERA does not preempt the Charter's distribution of decisionmaking authority over employment matters between the City and the board of education; (2) state law authorizes the Charter to provide that the wages of the District's classified employees be fixed by the board of supervisors and/or an arbitration panel rather than the board of education; and (3) the City electorate has the power to adopt Charter provisions regulating the wages and benefits of the District's classified employees and requiring that they be paid the same amount as City employees in the same civil service classifications.

C. Standard of Review

The parties disagree on the proper standard of review. Our Supreme Court has explained the standards we use in reviewing PERB decisions as follows: "The EERA created PERB as an independent board of three members and vested it with a broad spectrum of powers and duties, including the responsibility to investigate unfair practice charges or alleged violations of the EERA and 'take such action and make such determinations in respect to these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.' (§ 3541.3, subd. (i).) . . . [¶] PERB has a specialized and focused task—'to protect both employees and the state employer from violations of the organizational and collective bargaining rights guaranteed by the [EERA].' [Citation.] As such, PERB is 'one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and

therefore must respect.' [Citation.] '[T]he relationship of a reviewing court to an agency such as PERB, whose primary responsibility is to determine the scope of the statutory duty to bargain and resolve charges of unfair refusal to bargain, is generally one of deference' [citation], and PERB's interpretation will generally be followed unless it is clearly erroneous. [Citations.]" (*Banning Teachers Assn., supra,* 44 Cal.3d at pp. 804-805, fn. omitted.)

Local 21 contends this deferential standard is inappropriate here, however, arguing that PERB's decision is not worthy of deference because it is inconsistent with two previous PERB decisions. One of those decisions was annulled in *United Public Employees v. Public Employment Relations Bd*. (1989) 213 Cal.App.3d 1119 (*United Public Employees*). That case arose from an unfair practice charge filed with PERB by a union, charging that the San Francisco Community College District (SFCCD) had unilaterally decided that qualified classified employees would no longer be temporarily assigned to work as certificated teachers. PERB dismissed the charge, holding that SFCCD was not a joint employer of classified employees who worked at its facilities, that their sole employer was the City, and that they must look solely to the City's Charter and civil service rules for their benefits and protections. (*Id*. at pp. 1122-1123, 1126.) In reaching this decision, PERB reversed the position it had taken two years earlier in another case, *Barnes v. San Francisco Community College District* (May 1, 1986) PERB Order No. Ad-153 (*Barnes*), in which it had held that SFCCD was required to collectively bargain with the union because SFCCD and the City were joint employers of classified employees who worked at SFCCD. (*United Public Employees, supra*, 213 Cal.App.3d at pp. 1122-1123.)

In *United Public Employees*, Division Five of the First Appellate District annulled PERB's decision in that matter. (*United Public Employees, supra,* 213 Cal.App.3d at p. 1132.) It noted that PERB's construction of statutes will generally be followed unless it is clearly erroneous, but concluded that "this standard of review has little meaning in the present case because PERB has inconsistently construed the [relevant] statutes in two decisions: the *Barnes* case, and the instant decision." (*Id*. at p. 1125.) The Court of

Appeal went on to agree with PERB's reasoning in *Barnes*, concluding that a civil service commission and a governing board can be joint employers (*United Public Employees*, at p. 1129), and that the evidence showed that SFCCD was in fact a joint employer with the City: SFCCD hired and fired employees operating through a civil service framework, disciplined employees, was a party to grievance procedures, determined what each employee did guided by civil service classifications, set salaries by a resolution adopted by SFCCD, and awarded and paid certain fringe benefits. (*Id.* at p. 1131.)[7]

Local 21 argues that PERB's decision here is not entitled to deference because it conflicts with PERB's earlier decisions in *United Public Employees* and *Barnes*. We reject this argument. PERB's decision in this case did not turn on whether the District and the City were joint employers, but on whether the EERA preempted the Charter's impasse resolution procedures. Moreover, the decisions at issue in both *Barnes* and *United Public Employees* predate the passage of Propositions B and F. As shall be seen, the resolution of the dispute at issue here requires a consideration of the effect of the *current* provisions of the Charter, a matter that PERB, of course, did not consider in either of the earlier decisions, made more than 20 years ago. In the circumstances, it is

[7] The Court of Appeal's decision in *United Public Employees* noted that PERB in the *Barnes* decision had stated, " 'While *the City and/or Commission appears to control fundamental matters of wages and hours*, it remains clear from Education Code section 88137 and Charter section 5.104 that the operation and management of the school system, including the power to fix and assign duties of classified employees, is reserved solely to the governing board of the [SFCCD].' " (*United Public Employees, supra*, 213 Cal.App.3d at p. 1126, italics added.) In discussing the evidence in *United Public Employees*, however, the Court of Appeal noted: "*Salaries appear to be set by a resolution adopted by the [SFCCD]*." (*Id*. at p. 1131, italics added.) However salaries were set at the time, we note that both the PERB's decision in *Barnes* and the Court of Appeal's decision in *United Public Employees* predate the passage of Propositions B and F, which changed the City's procedures for setting salaries. In any case, the propriety of the procedures for setting SFCCD's employees' salaries was not at issue in *United Public Employees*. (See *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 127 [" ' "[i]t is axiomatic that cases are not authority for propositions not considered" ' "].)

appropriate to apply the ordinary deferential standard of review, under which we will follow PERB's interpretation unless it is clearly erroneous.

D. Analysis

In analyzing this case, we must decide three core questions: (1) whether the participation of District employees in the City's merit system encompasses the procedures by which the compensation of City employees is set; (2) whether the Charter provides for the City, rather than the District, to fix the salaries of the District's classified employees; and if so, (3) whether the EERA preempts such an arrangement.

1. The City's Merit System Does Not Encompass Fixing Salaries

We first consider the scope of the City's merit system, which PERB and the District contend does not currently include setting wages and salaries. We look first to the pertinent Charter provisions. With the passage of Proposition F, the City eliminated the previous salary standardization ordinance in favor of collective bargaining. In connection with the scope of the obligation to bargain regarding conditions of City employment, the Charter now provides in part: "Notwithstanding any other ordinances, rules or regulations of the city and county of San Francisco . . . , the city and county of San Francisco, through its duly authorized representatives, and recognized employee organizations representing classifications of employees covered by this part shall have the mutual obligation to bargain in good faith on all matters within the scope of representation as defined by Government Code section 3504, relating to the wages, hours, benefits and other terms and conditions of city and county employment . . . ; *provided, however that, except insofar as they affect compensation, those matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit system shall not be subject to bargaining under this part* . . . . As to these matters, the Civil Service Commission shall continue to be required to meet and confer pursuant to state law." (Charter, § A8.409-3, italics added.)[8]

[8] This section of the Charter lists the "matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit

It appears, then, that since the passage of Proposition F in 1994, eliminating the use of salary standardization schedules, the merit system no longer has a role in fixing compensation. Indeed, according to the Commission's executive officer, salary setting is not considered part of the merit system; although the District (and the SFCCD) share the City's merit system, wages are set by the City, the District, and the SFCCD, respectively; and there are no rules saying that each of these employers must provide the same wages for any particular classification. These facts undercut Local 21's position that classified District employees are entitled, though their participation in the City's civil service system, to the wages established for City workers in the same classifications or to the same procedures that are used to set the salaries of *City* employees.

Education Code section 45318 does not persuade us otherwise. That statute, which applies to classified employees of the District, provides that the classified employees shall be employed pursuant to the provisions of San Francisco's merit system of employment, "and shall, in all respects, be subject to, and have all rights granted by, those provisions," provided that the governing board of the District has the right to fix the employees' duties. Both the language of the Charter and the testimony of the Commission's executive officer support the conclusion that the City's merit system no

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system" as: "the authority, purpose, definitions, administration and organization of the merit system and the civil service commission; policies, procedures and funding of the operations of the civil service commission and its staff; the establishment and maintenance of a classification plan including the classification and reclassification of positions and the allocation and reallocation of positions to the various classifications; status rights; the establishment of standards, procedures and qualifications for employment, recruitment, application, examination, selection, certification and appointment; the establishment, administration and duration of eligible lists; probationary status and the administration of probationary periods, except duration; pre-employment and fitness for duty medical examinations except for the conditions under which referrals for fitness for duty examinations will be made, and the imposition of new requirements; the designation of positions as exempt, temporary, limited tenure, part-time, seasonal or permanent; resignation with satisfactory service and reappointment; exempt entry level appointment of the handicapped; approval of payrolls; and conflict of interest." (Charter, § A8.409-3.)

longer includes salary setting among its functions. PERB's conclusions that the District's classified employees are not entitled to the same salaries as those negotiated for City employees in the same classifications by virtue of their participation in the City's merit system, and that the District is not subject to the Charter's bargaining requirements, are not clearly erroneous.

2. Authority to Set District Employees' Compensation Under Charter

Local 21 contends, however, that the District lacks authority to set compensation for its own employees, that the Charter vests such authority in the City, and that the compensation of District employees is, therefore, subject to the Charter's bargaining and impasse resolution procedures.

In considering this issue, we first note the "fundamental principle" that "although the power to classify positions has frequently been lodged in civil service commissions or personnel boards, the actual authority to set salaries has traditionally been viewed as a legislative function, with ultimate authority residing in the legislative body." (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 188.) We must decide, then, whether the City or the District is the "legislative body" in question in determining the salaries of the District's employees. As we have noted, although the District was once treated as a department of the City, the Charter now provides that the District is under the control and management of an elected board of education (Charter, § 8.100), consistent with state law (Ed. Code, § 35010, subd. (a) ["[e]very school district shall be under the control of a board of school trustees or a board of education"]). Although the City's 1932 Charter provided that the salaries of those in non-teaching and non-technical positions in the District should be fixed in accordance with the Charter's salary standardization provisions, Local 21 has drawn our attention to no provision *currently* in the Charter providing that District employees should receive the same compensation as City employees in the same class or dictating their compensation in any other way.

Other factors also lead to the conclusion that the District is the legislative body with authority to set salaries for its employees. As authorized by the California Constitution, the Legislature has provided that "the governing board of any school district

may . . . act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established." (Ed. Code, § 35160; see Cal. Const., art. IX, § 14.) The District functions as an independent financial entity, and its budget is approved by the state, acting through the California Department of Education. Furthermore, the EERA itself requires a public school employer to meet and negotiate with representatives of employee organizations on matters within the scope of representation, which include "matters relating to wages." (§§ 3543.3, 3543.2, subd. (a).) The authority of the District, as a public school employer, to *set* salaries for its employees is implied necessarily and logically in the mandate that it *negotiate* salaries with them. In the circumstances, we conclude the District has authority to set its employees' salaries.

The process by which City employees' salaries are currently set also suggests that the City is not the proper party to determine the salaries of the District's classified employees. Under the current Charter procedures, negotiations take place between the employee representatives and the *City* (Charter, § A8.409-3); and in the event of an impasse, the *City* and the employee representatives engage in binding arbitration (*id.*, § A8.409-4(e)). The arbitrators are directed to consider, among other things, various factors relating to the financial resources of the *City*, "including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the board of supervisors; other demands on the city and county's' resources . . . ; and the city's ability to meet the costs of the decision of the arbitration board." (*Id.*, § A8.409-4(d).) Notably absent from these factors is any mention of the financial condition of the *District* or *its* ability to meet the costs of the arbitrators' decision.

The question here is not whether the City and the District can be joint employers. As Local 21 points out, that question has long since been answered in the affirmative, in *United Public Employers*, which concluded that "[a] civil service commission and a governing board can be joint employers" and discussed the evidence that SFCCD and the City were, in fact, joint employers of SFCCD's classified employees. (*United Public*

Employees, supra, 213 Cal.App.3d at pp. 1129-1131.) The fact that the City may act as employer of the District's classified employees for some purposes, however, does not mean that it now acts as their employer for the purpose at issue here—negotiating and setting employee compensation.

Local 21 draws our attention to Education Code section 45100, which provides that certain portions of the Education Code do not apply to "employees of a school district lying wholly within a city and county which provides in its charter for a merit system of employment for employees employed in positions not requiring certification qualifications . . . ." Those provisions include Education Code sections 45160 to 45169, which require the governing board of a school district to fix and order paid the compensation of classified employees and regulates how and when the salaries are set and paid. Based on these provisions and Education Code section 45318, Local 21 contends the District lacks authority to set salaries for its classified employees. Local 21's argument would have more force if the City's merit system still encompassed setting salaries. In the absence of any current connection between the merit system and the salaries of the District's classified employees, however, we see no basis to conclude that the City, rather than the District, controls those salaries. In any case, as we have already explained, state law endows the District with authority to set salaries for its employees. (See §§ 3543.3, 3543.2, subd. (a); Ed. Code, §§ 35010, subd. (a), 35160.)

3. Preemption by the EERA

We recognize, however, that the Charter provides negotiation and impasse resolution procedures authorized by Propositions B and F apply to "all miscellaneous officers and employees . . . and *including employees of San Francisco Unified School District* and San Francisco Community College District *to the extent authorized by state law*." (Charter, § A8.409-1, italics added.) To the extent the electorate intended the Charter's dispute resolution procedures to apply to District employees, PERB properly determined those procedures are not only *not authorized* by state law, but are preempted by state law, specifically the EERA.

The Legislature has plenary power over the public school system, and cannot delegate ultimate responsibility over education to other public entities. "Consequently, *regulation of the education system by the Legislature will be held to be controlling over any inconsistent local attempts at regulation or administration of the schools*." (*California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524 (*California Teachers Assn.*), italics added; see also *id.* at pp. 1533-1534.)

"[I]t has been held that a 'general law prevails over a local enactment of a chartered city, even in regard to matters which would otherwise be deemed to be strictly municipal affairs, where the subject matter of the general law is of statewide concern.' " (*People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 600 (*Seal Beach*).) As PERB noted in its decision, it is well established that creating fair labor practices, and the process by which salaries of local employees are fixed, is a matter of statewide concern. According to our Supreme Court, "there is a clear distinction between the *substance* of a public employee labor issue and the *procedure* by which it is resolved. [Italics in original.] Thus there is no question that 'salaries of local employees of a charter city constitute municipal affairs and are not subject to general laws.' [Citation.] Nevertheless, *the process by which salaries are fixed is obviously a matter of statewide concern* . . . . [Italics added.]" (*Id.* at p. 600, fn. 11; see also *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 289; *Baggett v. Gates* (1982) 32 Cal.3d 128, 139 [general laws seeking to assure fair labor practices may be applied to police departments of chartered cities, even though they impinge on local control to a limited extent]; *Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 293-295 [creation of uniform fair labor practices throughout the state was matter of state concern and general law was paramount].) In considering the scope of a school district's duty to bargain in *Sonoma County Bd. of Education, supra,* 102 Cal.App.3d at pages 701-702, Division One of the First Appellate District concluded the Legislature had manifested a policy "that in the areas of collective bargaining authorized under the provisions of the [EERA], those provisions prevail over conflicting enactments and rules

and regulations of the public school merit or civil service system relating to the matter of wages or compensation of its classified service."

There can be no doubt that the Charter's dispute resolution procedures conflict with those of the EERA. The EERA provides impasse resolution procedures, in the form of mediation and fact finding; the fact finders consider various criteria, including the financial ability of the public school employer and comparison of the wages of the employees involved with those of other public school employees in comparable communities. (§§ 3548-3548.8, 3548.2, subd. (b)(3), (4).) The fact finders' recommendation is advisory, and submission of the dispute to binding arbitration is voluntary. (§§ 3548.3, subd. (a), 3548.5, 3548.6.) Under the Charter, on the other hand, the City, rather than the District, bargains with employee representatives. (Charter, § A8.409-3.) In the event of an impasse, the matter is submitted to binding arbitration, in which parties other than the City or the District make a final determination, based on factors that have nothing to do with the District's priorities or ability to pay under the award. (*Id.*, § A8.409-4.)

At issue here is not merely what Local 21 characterizes as "the division and distribution among various municipal boards and commissions of decision-making authority over employment matters for [District's] classified employees," which Local 21 asserts is not a matter of statewide concern and therefore is reserved to the City under the home rule provisions of the California Constitution. (See Cal. Const., art. XI, § 5.) As we have explained, the District is a separate entity from the City, with its own governing board, the operation of which is a matter of statewide concern. (*California Teachers Assn.*, *supra*, 5 Cal.App.4th at p. 1524; *Evans*, *supra*, 209 Cal.App.3d at pp. 1480-1481.) PERB properly concluded that the remedy Local 21 seeks would encroach on matters of statewide concern, and that it is preempted by the EERA.

The EERA's non-supersession clause does not persuade us otherwise. Section 3540 provides, in pertinent part: "This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or *a merit or civil service system* or which provide for other methods

of administering employer-employee relations . . . ." (Italics added.) As we have already explained, the salaries to be paid to classified District employees, and the method by which those salaries are established, no longer fall within the purview of the City's merit system. Furthermore, construing a similar provision of the Meyers-Milias-Brown Act (§ 3500 et seq.) (MMBA), our Supreme Court has stated, "section 3500 reserves to local agencies the right to pass ordinances and promulgate regulations consistent with the purposes of the MMBA." (*Los Angeles County Civil Service Com. v. Superior Court* (1978) 23 Cal.3d 55, 62-63 (*Los Angeles County Civil Service Com.*).)[9] Here, the Charter impasse resolution procedures are *not* consistent with the EERA's.

Local 21 argues, however, that the Charter regulates other benefits of the District's classified employees, including retirement, vacation, and health insurance benefits; that the case law has affirmed the power of the City's electorate to adopt such provisions; and that it necessarily follows that voters must also have the authority to require wage parity for the District's classified workers in the same civil service classifications. PERB points out correctly that the record on these matters was not developed below, and those benefits are not before us now. In any case, *Butterworth v. Boyd* (1938) 12 Cal.2d 140, upon which Local 21 relies, is not on point. Our Supreme Court there concluded that a City health plan could properly include employees of the District, although the District was a separate entity from the City, "provided that these provisions do not conflict with the general law." (*Id.* at pp. 151-152.) We have already concluded that it *would* conflict

[9] The MMBA governs collective bargaining procedures between public employers and their employees, but excludes from its scope "a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system . . . ." (§ 3501, subd. (c).) As pertinent, section 3500 provides: "(a) . . . Nothing [in the MMBA] shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations. . . ." (See *Los Angeles County Civil Service Com., supra*, 23 Cal.3d at p. 62.)

with the general law, specifically the EERA, to hold the District subject to the Charter's provision for resolving disputes regarding compensation.[10]

Having reached this conclusion, we need not consider the District's argument that application of the City's collective bargaining process would violate the California Constitution.

III. DISPOSITION

PERB decision No. 1948 is affirmed.

_____
RIVERA, J.

We concur:

_____
RUVOLO, P.J.

_____
REARDON, J.

[10] PERB suggested in its decision that an employer and an employee organization may properly agree to "interest arbitration procedures that do not conflict with the procedures set forth in the EERA." No such procedures are before us now, and we express no opinion on PERB's statement.